

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA Nos. 143/Ind/2023
Assessment Years: 2014-15

DCIT, Circle 5(1), Bhopal	<u>बनाम/</u> Vs.	M.P. Warehousing and Logistics Corporation, Office Complex, Block 1, Gautam Nagar, Bhopal
(Revenue / Appellant)		(Assessee / Respondent)
PAN: AADCM 7742 B		
Revenue by	Ms. Simran Bhullar, CIT DR	
Assessee by	Shri S.S. Deshpande, CA	
Date of Hearing	18.10.2023	
Date of Pronouncement	26.10.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 31.01.2023, passed by learned Commissioner of Income-Tax (Appeals), NFAC, Delhi ["Ld. CIT(A)"], which in turn arise out of assessment-order dated 01.12.2016 passed by learned DCIT, Circle 2(1), Bhopal, ["Ld. AO"] u/s 143(3) of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2014-15, the revenue has filed this appeal on following grounds:

- 1. On facts & in the circumstances of the case, the order of the CIT(A) is perverse in so much so that the CIT(A) has merely quoted earlier judgments without even discussing the facts of the case.*
- 2. On the facts and in the circumstances of the case, any expenditure booked in the year under consideration is liable to be verified and the CIT(A) has*

erred in omitting on any discussion of facts of the case and has decided the appeal in favour of the assessee without verification on whether the expenses incurred are revenue in nature or capital in nature.

3. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in stating that the AO acted illegally when the question of law has not been decided either by Jurisdictional High Court or the APEX Court and the facts and circumstances might differ for year to year and CIT(A) has not stated facts and, therefore, has passed a non-speaking order without deciding or bringing the facts on record to support the contention of allowing assessee's claim.*

4. *On the facts and in the circumstances of the case, the CIT(A) without getting to the details of the case has erred in deleting the disallowance made by the AO to the tune of Rs. 1,47,81,085/- treating the same as revenue expenditure instead of capital expenditure as held by the AO, since there was no basis for apportionment of the overhead expenditure between construction and other activities claimed by the assessee."*

2. The registry has informed that the present appeal is delayed by 16 days and therefore time-barred. Ld. DR submits that the revenue has filed an application for condonation of delay supported by an affidavit on stamp. On perusal of the application/affidavit, we observe that the AO from revenue's side has made an averment that the short delay of 16 days has occurred due to time-barring proceedings undertaken in March month which led to difficulty in tracing the manual file to understand the facts of the case. It is further prayed that the delay has occurred due to this reason only and not because of any lethargy, negligence or mala fide intention; therefore the delay ought to be condoned. Ld. AR for assessee left the matter to the wisdom of Bench. We have considered the explanation and in absence of any contrary fact or material on record, the revenue is found to have a reasonable cause for delay in filing the present appeal. Placing reliance on decision of Hon'ble Supreme Court in **Collector, Land Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387**, we take a judicious view; condone delay and proceed with appeal.

3. The solitary controversy involved between revenue/appellant and assessee/respondent is on the disallowance of salary of construction staff

amounting to Rs. 1,47,81,085/- made by AO during assessment-proceeding but deleted by CIT(A) in first-appeal.

4. Ld. DR for revenue/appellant carried us to Para No. 1 of assessment-order and submitted that while conducting assessment, the AO observed that the assessee has debited a sum of Rs. 1,47,81,085/- under the head 'Salary, allowance and other expenses – Construction". When the AO show-caused assessee to explain why the amount debited in P&L A/c may not be treated as capital expenditure and disallowed, the assessee filed a reply that the assessee is a statutory corporation mainly engaged in warehousing and construction activity; that it has a 'construction division' which carries out three activities, namely (a) construction of new godowns – fixed assets, (b) repair and maintenance of existing godowns, and (c) supervision of construction work assigned by Govt. agencies. It was further submitted that the staff of 'construction division' performed all those activities and hence their salary was apportioned between revenue and capital as per accounting policy consistently followed by assessee and after a careful exercise and allocation, the sum of Rs. 1,47,81,085/- was treated as 'revenue' portion and debited to P&L A/c. Ld. DR submitted that the AO has considered assessee's submission in Para No. 1.4 of order where he found that while computing taxable income, deduction has to be allowed as per provisions of Income-tax Act, 1961 and not on the basis of accounting policy followed by assessee. The AO further observed that section 37(1) allows deduction of revenue expenses only and does not permit deduction of capital expenditure. The AO also noted that the apportionment made by assessee between construction and other activities is without any basis. Ld. DR submitted that the AO has rightly disallowed the deduction of Rs. 1,47,81,085/- claimed by assessee giving valid reasons. Therefore, the disallowance made by AO deserves to be upheld.

5. Replying to Ld. DR's submissions, Ld. AR for assessee submitted that this is a recurring issue in the case of assessee year after year and in earlier

years, it has been decided by CIT(A)/ITAT in favour of assessee and the disallowance made by AO has been deleted. Ld. AR drew our attention to Para No. 5.3 of the order of first-appeal and submitted that in current year, the CIT(A) has given relief to assessee following earlier year's orders. Then, the Ld. AR also carried us to Page No. 24-36 of Paper-Book where a copy of the letter dated 24.11.2016 submitted by assessee to AO during assessment-proceeding is filed. Referring to same, Ld. AR submitted that the assessee incurred a total expenditure of Rs. 2,74,96,230/- on account of staff salary in construction division and after carrying out a systematic exercise of man days spent by employees for various activities, a sum of Rs. 1,27,15,145/- was arrived as capitalizable and a sum of Rs. 1,47,81,085/- was found for revenue purposes. Accordingly, based on a systematic exercise done in the same manner as was done in earlier years, the assessee computed revenue element of Rs. 1,47,81,085/- and debited to P&L A/c. Ld. AR submitted that the manner of allocation done by assessee is same as was done in earlier years and very much accepted in those years by CIT(A) as well as ITAT. Ld. AR also filed a copy of ITAT order in **ITA No. 130 to 133/Ind/2012 for AY 2005-06 to 2008-09 dated 03.05.2012** in assessee's case, wherein the CIT(A)'s order accepting the assessee's approach, was affirmed by ITAT (Para No. 2 to 4 of order). With these submissions, Ld. AR prayed that the impugned order passed by CIT(A) in present case is a valid order; his order must be affirmed.

6. We have heard learned Representatives of both sides and perused the case-records including orders of lower-authorities, documents placed in Paper-Book and the previous order of ITAT. At first, we re-produce the order of first-appeal passed by CIT(A) on this issue:

"Ground no. 3 & 4:

Ground No. 3 & 4 are pertaining to the disallowance of Rs. 1,47,81,085/- on salary allowances and therefore expenses – construction division by treating it as capital expenditure. The contention of the appellant is that it has already capitalized actual expenses pertaining to the construction activities of the fixed

asset on the basis of consistently followed accounting practice and record showing actual allocation of manpower to the construction activity.

The identical issue was involved in earlier in appellant's own case and the issue has been decided in favour of the appellant by the Ld. CIT(A) as well as the Hon'ble ITAT:

- a) A.Y. 2005-06 to 2008-09 by Ld. CIT(A)-I and Hon'ble ITAT*
- b) A.Y. 2010-11 by Ld. CIT(A)-I and Hon'ble ITAT*
- c) A.Y. 2011-12 by Ld. CIT(A)-I and Hon'ble ITAT*
- d) A.Y. 2012-13 by Ld. CIT(A)-I, Bhopal*

It is summarized as under:-

The expenses of salary, allowances and other expenses (construction) are bifurcated into revenue expenditure and capital expenditure on the basis of actual time/man days spent on construction of own godowns and repair and maintenance of about 1000 own godowns of the appellant. These bifurcations of revenue and capital expenditure is being allowed year to year by the appellant authorities. On similar issue the additions were deleted by the Hon'ble ITAT and the CIT(A), Bhopal in the assessment year 2005-06 to 2008-09 and assessment year 2010-11.

The observation that apportionment of the overhead expenditure between construction and other activities claimed by the assessee is without any basis is not correct. The appellant has produced and submitted the details of expenses alongwith its apportionment between revenue and capital expenditure before the AO on dated 24.11.2016.

In this connection, the appellant placed reliance on the judgment of the ITAT Visakhapatnam in the case of M/s. Cargo Handling Private Workers Pool Vs. DCIT (ITA Nos. 152 to 156/Vizag/2011) in which it is held that order of Jurisdictional Tribunal is binding on the lower authorities. This order also, refers to the Hon'ble M.P. High Court in the case of Agrawal Warehousing and Leasing Ltd. Vs. CIT (257 ITR 235) and Hon'ble Supreme Court decision in the case of UOI vs. Kamlakshi Finance Corpn. Ltd., (AIR 1992 S.C. 711). Hence, the Id. AO has acted illegally in not considering the order of the Hon'ble ITAT Indore dt. 03.05.2012 for the assessment years 2005-06 to 2008-09 in which the similar issue has been allowed in appellant's favour. Thus, this ground of appellant is allowed."

7. Thus, we observe that this issue has been coming in assessee's case year after year and every year, the disallowance made by AO has been deleted by CIT(A)/ITAT. Ld. DR for revenue, though re-iterated the order of AO and also dutifully relied upon same, could not explain any change in the facts or law so as to show non-applicability of the view taken by CIT(A)/ITAT in earlier years or to interfere with the impugned order passed by CIT(A) in

current year. Faced with this situation, we agree to the impugned order of CIT(A) and uphold the same. The grounds raised by revenue are dismissed.

8. Resultantly, this appeal of revenue is dismissed.

Order pronounced in the open court on 26.10.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 26.10.2023

CPU/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore